time that it was registered, defendant obtained and docketed a judgment against W. *Held,* under Revisal 1905, § 980, providing that no conveyance shall be valid to pass any property, as against creditors or purchasers for a valuable consideration, but from the registration thereof, judgment so docketed against the grantor was a superior lien on the land. *Maxton Realty Co.* v. *Carter et al.* (N. C. 1915), 86 S. E. 714.

By the rules of the common law, a judgment creditor was not regarded as a purchaser for value because the judgment creditor does not lend his money upon the immediate view or contemplation of cognizor's real estate. *Brace* v. *Marlborough,* 2 P. Wms. 491. Unless this construction has been changed by statute, the same rule would obtain. *Rodgers* v. *Gibson,* 4 Yeates (Pa.) 111. "It is the *property* of the *debtor,* which is bound by the attachment from the time of service, and not the property of another. * * * If he has no interest, legal or equitable, there is nothing upon which the judgment can rest; nothing to which the lien can attach. * * * The ordinary purchaser pays a new consideration. Not so with the judgment creditor. Such creditor comes in *under* the debtor, and not, as does the purchaser, *through* him. The consequence is that the creditor is entitled to the same rights as the *debtor* had, and no more." *Norton* v. *Williams,* 9 Iowa 528, 531. In some states, by statute, a judgment lien has priority over an unrecorded deed or mortgage, of which the judgment creditor had no notice at the time his lien attached. *McCoy* v. *Rhodes,* 11 How. 131; *Humphreys* v. *Merrill,* 52 Miss. 92; *Massey* v. *Westcott,* 40 Ill. 160; DEVLIN, REAL ESTATE, § 635; 4 MICH. L. REV. 664. If the deed is not recorded "until after a judgment is rendered against the vendor, the subsequent registration of the deed does not relate back so as to defeat the lien of the judgment, but the statute avoids this deed in favor of the judgment creditor who has no notice of such deed, either actual or constructive, at or before the rendition of such judgment." *Pollard* v. *Cocke,* 19 Ala. 188. These statutory modifications are justified when we consider the development of our commercial and industrial world. "The policy of the statute is to make void secret sales and conveyances by debtors, whereby purchasers and creditors without notice would be deceived and injured. As to them, the statute treats the title as still remaining in the grantor, and as passing by the subsequent conveyance or liable to creditors. * * * The law imposes the duty upon a purchaser to spread his muniments of title upon the public records, so that it may be known that he is owner. If he fails to do that he takes the risk of a subsequent sale, for value, of the property by his vendor, or of its subjection to his debts; nor can he prevail against such purchaser or creditor unless he can charge the purchaser or creditor with notice of his prior right." Simrall, C. J., in *Humphrey* v. *Merrill,* supra, at page 94.

JUDGMENT—REVIVAL BY SCIRE FACIAS.—A judgment more than twenty years old was revived on *scire facias* on order of an Illinois court. The revived judgment was sued on in California. *Held,* the action is not barred by the Code of Civil Procedure, § 336, providing that actions on decrees of

courts of other states shall be commenced within five years, since the judgment of revival is a new judgment, and not a mere continuation of the old judgment. *Thomas* v. *Lally* (Cal. App. 1915), 152 Pac. 53.

"A *scire facias* is a judicial writ issued for the purpose of substantiating and carrying into effect an antecedent judgment." *Jarvis* v. *Rathburn*, Kirby, 220. From this definition, it would seem that the proceeding by *scire facias*, while it partakes in some measure of the characteristics of an independent action at law (as in requiring service of a writ and a plea by the defendant), yet is not regarded as a new suit. BLACK, JUDGMENTS, § 482a. The object sought and the result accomplished by a *scire facias* both show that it is not a new action, but merely a continuation of an old one; no cause of action beyond the old one can be asserted; no defense anterior to the old judgment can be brought forward; and the judgment entered upon the *scire facias* is simply that the plaintiff have execution for the judgment mentioned in said *scire facias* and costs. FREEMAN, JUDGMENTS, § 442; *Hatch* v. *Eustis*, 1 Gall. 160, Fed. Cas. No. 6207; *Fitzhugh* v. *Blake*, 2 Cranch, C. C. 37; *Hopkins* v. *Howard*, 12 Tex. 7; *Challenor* v. *Niles*, 78 Ill. 78. In some cases it has been spoken of as a new cause of action. The "averments in the writ are equivalent to a petition or declaration; and while it is true that a *scire facias* for the purpose of obtaining execution is ordinarily a judicial writ to continue the effect of the former judgment, yet it is in the nature of an action because the defendant may plead to it; and in many cases it has been classified as in substance a new action." *Browne* v. *Chavez*, 181 U. S. 71. See also, *Fenner* v. *Evans*, 1 T. R. 267; *Winter* v. *Kretcham*, 2 T. R. 45. If this is a new cause of action, it would seem that the judgment entered in the new proceedings is a new judgment. In Iowa the court held that in revival proceedings the lien of the original judgment ceased to exist, and became merged in the judgment rendered in the new proceeding for the full amount of the former judgment with interest and costs. *Denegre* v. *Haun*, 13 Iowa, 240; *Bertram* v. *Waterman*, 18 Iowa, 529. In Maryland the court held that judgment entered on a *scire facias* extinguishes the lien of the original judgment as against one not made a party to the new proceedings to revive, and that the *fiat* "is considered a new judgment." *Wright* v. *Ryland*, 92 Md. 645, 53 L. R. A. 702, but there was a vigorous dissent by JONES, J., in that case. The view of that case seems to be contrary to the conclusion reached in other cases in which the question has been discussed. Thus in *Stockwell* v. *Walker*, 3 Ind. 215, a revival proceeding against the judgment debtor alone was held not to extinguish the first judgment or release the replevin bail upon that judgment. In Pennsylvania a judgment upon *scire facias* is *quod recuperet*, but still they hold in that state that while the judgment on the *scire facias* is in some respects in the nature of a new judgment, "it is not considered as operating to merge and extinguish the original judgment to all intents and purposes so as to take away the rights of the plaintiff." *Furst* v. *Overdeer*, 3 Watts & S. 470; *Little* v. *Smyser*, 10 Pa. 381. Doubtless a judgment entered on *scire facias* is for many purposes a new judgment (as to stop the statute of limitations, *Mann* v. *Cooper*, 2 App. D. C. 226); but it is

not a new judgment in the sense that it releases land from a lien, simply because the *scire facias* is sued out against the defendant alone and does not include several alienees. *Furst* v. *Overdeer,* supra.

MARRIAGE—EFFECT OF PROHIBITION IN FOREIGN DIVORCE DECREE.—Plaintiff was divorced in Vermont where the statute (P. S. 3110, Vt.) provides that the libelee in a divorce proceeding shall not remarry within three years. Within the prohibited period she remarried in Missouri and now sues in Vermont upon a policy of insurance upon the life of her second husband. The policy contained a provision making it necessary for the plaintiff to be the lawful wife of the insured to maintain an action thereon. *Held,* that the plaintiff could recover. *Patterson's Admr.* v. *Modern Woodmen of America,* (Vt. 1915), 95 Atl. 692.

There is a wide division of opinion in the authorities as to whether a marriage when contracted under the above circumstances will be valid in the state where the divorce is granted. MINOR, CONFLICT OF LAWS, § 74. *Putnam* v. *Putnam,* 8 Pick. 433; *Inhabitants of West Cambridge* v. *Lexington,* 1 Pick 506; *Ponsford* v. *Johnson,* 2 Blatchford (U. S. C. C.) 51; *State* v. *Shattuck,* 69 Vt. 403; *State* v. *Richardson,* 72 Vt. 49; *Van Voorhis* v. *Brintnall,* 86 N. Y. 18; *Thorp* v. *Thorp,* 90 N. Y. 602; *Moore* v. *Hegeman* 92 N. Y. 521; *In Re Estate of Wood,* 137 Cal. 129, take the same view as the principal case. Of a contrary opinion are *Williams v. Oates,* 5 Iredell Law (N. C.) 535; *Pennegar & Haney* v. *State,* 87 Tenn. 244; *Lanham* v. *Lanham,* 136 Wis. 360; *Wilson* v. *Cook,* 256 Ill. 460; *Estate of Stull,* 183 Pa. St. 625; *McLennan* v. *McLennan,* 31 Ore. 480, 50 Pac. 802, 38 L. R. A. 863. The divergence of opinion is due to the interpretation of the statute. Those courts following the doctrine of the principal case consider that the prohibition of the statute is in the nature of a penalty. *State* v. *Shattuck, supra.* The courts reaching the opposite conclusion hold that the provision of the statute is a part of the public policy of the state. *Wilson* v. *Cook,* supra; 11 MICH. LAW REV., 406; 13 ID. 592.

MUNICIPAL CORPORATIONS—NEGLIGENCE IN CONSTRUCTION OF DITCH.—Defendant city constructed a ditch, which was a part of its drainage system, through the plaintiff's premises. In a time of heavy rainfall, the ditch was insufficient for the free passage of the water, which overflowed the banks of the ditch. The plaintiff alleged that he suffered damage by reason of the negligent construction of the ditch and a failure to repair the same after the city had notice of the defective condition. A demurrer was filed in which it was claimed that there was no duty to repair the ditch, that no negligence was shown in the construction, and that the injury complained of was outside the corporate limits and ultra vires. *Held,* that the demurrer was properly overruled and that the municipality, having authority under the CODE § 1303 to construct a ditch outside as well as within the corporate limits, was liable for its negligence in the construction and maintenance of the same. *City of Montgomery* v. *Stephens* (Ala. 1915), 69 So. 970.